

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8662

File: 20-275130 Reg: 06063020

HOSKIN HOGAN, dba Hogan's AM/PM Market
14221 South Figueroa Street, Los Angeles, CA 90061,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: August 7, 2008
Los Angeles, CA

ISSUED NOVEMBER 13, 2008

Hoskin Hogan, doing business as Hogan's AM/PM Market (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended his license for 25 days for his clerk selling an alcoholic beverage to a Department minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Hoskin Hogan, appearing through his counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, Kerry K. Winters.

¹The decision of the Department, dated December 7, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on August 25, 1992. In June 2006 the Department filed an accusation against appellant charging that, on February 9, 2006, appellant's clerk sold an alcoholic beverage to 19-year-old Christine Schmitthammer. Schmitthammer was working as a minor decoy for the Department at the time.

At the administrative hearing held on October 18, 2006, documentary evidence was received, and testimony concerning the sale was presented by Schmitthammer (the decoy), by Department investigators Matthew Pavlich and Enrique Alcala, and by the clerk. Appellant Hoskin Hogan also testified.

The testimony established that the clerk sold a 24-ounce can of Bud Light beer to the decoy after looking at the decoy's valid California driver's license showing her date of birth as August 31, 1986. After looking at the license, the clerk said "86, 96," and either "I guess you're 21," or "Yeah, you're old enough." The decoy did not say anything. After paying, the decoy left the store with the beer, but later returned and identified the clerk as the seller.

The Department issued its decision which determined that the violation charged was proved and no defense was established. Appellant filed an appeal contending: (1) Rule 141(b)(2) (4 Cal. Code Regs., § 141, subd. (b)(2)) was violated; (2) the Department lacked procedures to effectively screen its attorneys acting as advocates from those acting as decision makers or advisors to the decision maker; and (3) the Department engaged in improper ex parte communication.

DISCUSSION

The Department filed a brief that states:

The Department of Alcoholic Beverage Control does not concede any of the issues raised in appellant's opening brief. However, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Quintanar)* (2006) 40 Cal.4th 1.

Appellant has not objected to the Department's suggested action, and we have no reason to contradict the suggestion. Under the circumstances, we will remand this matter to the Department for further proceedings in light of *Quintanar*.

ORDER

The matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.